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In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1954

JACK C. VAUGHAN, *Petitioner,*

vs.

CARNEAL WARFIELD, C. A. MEWIS and MRS. C. A. MEWIS, B. H. KRAEMER and MRS. B. H. KRAEMER, J. W. KING, THE FIRST NATIONAL BANK OF GREENVILLE, MISSISSIPPI, JOSH KEITH, GRADY KEITH, and JOHN KEITH, d/b/a KEITH BROS. *Respondents.* } No. .....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of JACK C. VAUGHAN respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On November 18, 1952, Vaughan, then a Mississippi citizen residing in Louisiana (R. 1) with intent to become a citizen of that State, filed suit "In Equity" (R. 1) in the

District Court of the United States for the Eastern District of Arkansas, against the defendants (R. 1), seeking cancellation of certain deeds to real property (a plantation known as the "Florence" Plantation) (R. 8-9), located within the District Court's Western Division, in Chicot County, Arkansas (R. 3), valued in excess of $75,000.00 (R. 3) and which deeds were alleged to have been obtained through frauds of certain of the defendants (R. 8).

Ancillary and subordinate to this main or principal suit (R. 24), Vaughan sought:

A-1. Cancellation of all deeds coming into existence as the result of the alleged frauds (R. 8-9).

A-2. Vesting of legal title in Vaughan (R. 9).

A-3. Payment by defendant, Mewis, who allegedly successfully obtained possession of the property by fraud (R. 8), for crops destroyed by him which belonged to Vaughan, and were under mortgage to the United States (R. 9).

B-1 and B-2. Estoppel of defendants King, real estate agent; and Vaughan's agent, the First National Bank of Greenville, Mississippi, from asserting any claim to a real estate commission, which they would have been entitled to (R. 9-10) had there been no alleged fraud or dereliction on their parts.

C. Repayment to Vaughan, by Vaughan's attorney, defendant Carneal Warfield, of a $500.00 retainer paid him; since the said Warfield, unknown to Vaughan, became defendant Mewis' attorney (R. 10), and was primarily responsible for the successful perpetration of the alleged frauds (R. 21-23), resulting in Vaughan's loss of the property (R. 8).

D., E. and F. The vacating of the premises of "Florence" Plantation by Mewis and all persons holding under him—the defendants Kraemer and Keith Brothers et al. (R. 10-11).

Service of summons was obtained only on the defendant Carneal Warfield (R. 17) on December 4, 1952.

On December 12, 1952, defendant Warfield entered his plea saying that the suit was for less than $3,000.00, and moved for dismissal, as follows:

> **"The complaint shows on its face that the sole relief sought by plaintiff against the defendant is a monetary judgment in the sum of Five Hundred Dollars ($500.00), with interest and costs."**
>
> **"Wherefore, defendant Carneal Warfield moves the Court to dismiss the action against him on the ground that the Court lacks jurisdiction because the amount actually in controversy is less than three thousand dollars ($3,000.00), exclusive of costs"** (R. 19).

This was the **only pleading** filed in this cause by the defendants.

On December 17, 1952, Vaughan responded, stating that:

> 1.
>
> "He admits that ancillary and subordinate to the principal proceeding, he seeks judgment against the defendant Carneal Warfield in the amount of Five Hundred Dollars ($500.00). But denies that the sole relief sought by plaintiff against the defendant Warfield is a monetary judgment in the sum of Five Hundred Dollars ($500.00) with interest and costs" (R. 20).
>
> 2.
>
> "That this action is a single controversy as between plaintiff and the several defendants. The defendant Carneal Warfield, movant, as a principal party to the alleged fraudulent transactions set forth more fully in the complaint, is a necessary and essential party to the main controversy of this suit" (R. 20).
>
> 3.
>
> "That the monetary judgment of Five Hundred Dollars ($500.00) with interest, requested by plaintiff, is merely collateral, ancillary and subordinate to the principal proceeding, which is the recovery of the lands known as "Florence" Plantation, valued at more than Seventy-Five Thousand Dollars ($75,000.00), as set forth more fully in the complaint" (R. 20-21).

On December 17, 1952, Vaughan filed Motion for warning order as to the absent defendants (R. 28-29). On January 2nd, 1953, Vaughan filed motion for leave to amend his complaint (R. 30-33).

On January 5, 1953, **ex parte** (R. 45), an Order (R. 34) was issued by a Judge by Special Assignment (R. 37) to the District Court, and which Order was rendered at the instance of and for the sole benefit of defendants, without notice to Vaughan; without a responsive answer by defendants to the complaint, and without any trial or hearing (R. 57).

The Order not only sustained defendant Warfield's motion and dismissed the suit for lack of jurisdiction as to him (R. 36); but dismissed the suit for lack of jurisdiction as to all of the other defendants (R. 37) and included in the Order lengthy findings of facts upon the merits of the case just as though a trial or hearing upon the merits had been held (R. 34-37).

Vaughan appealed to the Eighth United States Circuit Court of Appeals (R. 37). On October 21, 1953 (R. 50), that Court affirmed the decision of the District Court and made the **further** finding upon the merits that

> "The alleged equitable basis of the suit had been adjudicated in the State Court against the appellant before this suit was commenced" (R. 53).

On November 4, 1953, Vaughan filed petition for rehearing (R. 55) showing that he was cut off from any hearing on the questions of either jurisdiction or the merits, and his case adjudicated in the lower court without notice (R. 57). In particular, Vaughan pointed out that

> ". . . despite any ruling of the State Court on the December 1, 1950, option date—**at the least, the appel-**

lant still had his equitable right to a one-half interest in the farm until December 31, 1952, which the defendants herein allegedly fraudulently denied him" (R. 59).

From the Order of the Court of Appeals of November 13, 1953, denying said petition for rehearing, Vaughan now petitions this Court for writ of certiorari. Stay of mandate of the Court of Appeals was granted by that Court by Order entered November 30, 1953, pending filing of petition in this Court (R. 62).

II.

JURISDICTION TO REVIEW

The Order of the Court of Appeals sustaining the Order of the District Court was entered on October 21, 1953 (R. 50). Within time allowed, on the 4th of November, 1953, Vaughan filed his Petition for Rehearing (R. 55), and same was denied by Order entered on the 13th of November, 1953 (R. 61). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254, Act of June 25, 1948, Chapter 646, 62 U. S Statutes, page 928.

III.

QUESTIONS PRESENTED

A. Whether a suit asserting an equitable claim to real property may be properly dismissed by the District Court as not involving a controversy within the District Court's jurisdiction where the facts of jurisdictional amount and diversity of citizenship, as well as the fact of the principal suit being for the cancellation of allegedly fraudulently obtained deeds to real property located within the District are affirmatively and conclusively shown by the Complaint, and not denied by defendants.

B. Whether the principal suit supports all proceedings in the same Federal District Court which are ancillary or incident to it, without the necessity for diverse citizenship, or a federal question, or of the jurisdictional amount, or any other factor of original jurisdiction.

C. Whether a Federal District Court, having determined that it is without jurisdiction of the cause, may, in its **ex parte** Order dismissing the cause for lack of jurisdiction, make findings upon the merits, without notice, without a hearing, or without a trial upon the merits being held.

D. Whether there is any law or Rule of the Federal Rules of Civil Procedure which will permit the occasion of an **ex parte** dismissal for lack of jurisdiction to give to the District Court the right to determine, **ex parte**, the question of jurisdiction or the merits of the case without a trial or a hearing on the question of jurisdiction or the merits—or at least without notice of such being first given the plaintiff by the court or the defendants.

E. Whether, upon a motion to dismiss, the complaint should be construed in the light most favorable to the plaintiff, with all doubts resolved in his favor, and the allegations accepted as true.

IV.

REASONS FOR ALLOWANCE OF THE WRIT

The United States Circuit Court of Appeals has sanctioned such a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for an exercise of this Court's power of supervision.

A. The decision of the Circuit Court of Appeals allows the District Court to disregard all provisions of law requiring that the adversary be given proper notice; and that a hearing or trial be had in "open court" before determination of the merits of the case. **Rules 5(a), (b), and 77(b) of the Federal Rules of Civil Procedure.**

B. The decision of the Circuit Court of Appeals allows the District Court to disregard **Rules 8(a), (e) and (f) of the Federal Rules of Civil Procedure** by refusing to take jurisdiction of the **res**, "Florence" Plantation; grounds for so doing being clearly and affirmatively presented by the Complaint— and which grounds were not denied, as required by **Rule 8(d) of said Rules**, by the defendants.

C. The decision of the Circuit Court of Appeals allows the District Court to disregard the Rule laid down by this court in **Wabash Railroad Co. v. Adelbert College of the Western Reserve University, 208 U. S. 38; 52 L.Ed. 379; 28 S.Ct. 182. Rehearing denied, 208 U. S. 609; 52 L.Ed. 642; 28 S.Ct. 425**, that the principal suit supports all proceedings in the same federal district court which are ancillary or incidental to it (without the necessity for diverse citizenship, or a federal question, or of the jurisdictional amount, or any other factor of original jurisdiction).

D. The decision of the Circuit Court of Appeals allows the District Court to disregard **Rule 20(a) of the Federal Rules of Civil Procedure.** Once the District Court has properly accepted jurisdiction of the **res**, "Florence" Plantation, it has the power to adjudicate ancillary matters which arose out of the same series of allegedly fraudulent transactions or occurrences involving Vaughan's loss of "Florence" Plantation; where one question, that of fraud, common to all of the Defendants, will arise in the same action.

V.

CONCLUSION.

It is required of every Court that it first determine its jurisdiction of the case. In so doing, it asks itself whether it is legally competent to judge the issues set forth in the complaint. If it finds that it is without jurisdiction of the persons or subject matter; then that should be the end of the matter, insofar as that particular Court is concerned.

In this case, we have a Federal District Court which, having improperly determined as petitioner believes, that it is without legal right to judge or determine the merits because of its lack of jurisdiction; **now proceeding to make a determination of facts upon the merits, without a trial or a hearing, or proper notice being first given the plaintiff** —thereby placing upon the record as **res judicata,** an unlawful judgment upon **merits,** and to which unlawful judgment all future courts must defer.

It is respectfully suggested, therefore, that if the Order of the District Court, which has been sustained by the Circuit Court of Appeals, be allowed to stand as the law of the United States, then what is there to prevent the overthrow of Constitutional rights by any future federal judge by **ex parte** denying his right to judge; **then proceeding to rule upon the merits; thereby slyly denying a party his right to trial by jury—or his right to any other Constitutional guarantee?**

Such a tyranny would not be tolerated by this Court for one moment.

For the foregoing reason, and for the reasons heretofore set forth; it is respectfully submitted that the Petition for Writ of Certiorari should be granted.

JACK C. VAUGHAN,
Petitioner, pro se.

CERTIFICATE.

The undersigned, Jack C. Vaughan, Petitioner, hereby certifies that he appears here in his own behalf not from choice; but because he was professionally advised by an Arkansas attorney-at-law, and for which advice a fee was paid, that notwithstanding ethics; no Arkansas lawyer would take his case against another Arkansas lawyer, no matter what the merits.

JACK C. VAUGHAN,
Petitioner, pro se.

BRIEF OF JACK C. VAUGHAN IN SUPPORT OF HIS PETITION FOR A WRIT OF CERTIORARI.

****

OPINIONS BELOW

The Order of the District Court of the United States for the Eastern District of Arkansas, entered on January 5, 1953, appears at pages 34-37 of the Record. It is not officially reported.

The Decision of the United States Circuit Court of Appeals for the Eighth Circuit, of date October 21, 1953, affirming the Order of the District Court, appears at pages 50-54 of the Record. It is not officially reported.

The Order of the United States Circuit Court of Appeals for the Eighth Circuit, of date November 13, 1953, denying Appellant's Petition for Rehearing, appears at page 61 of the Record. And its Order granting stay of mandate pending petition to this Court for writ of certiorari appears at page 62 of the Record.

JURISDICTION

The grounds upon which the jurisdiction of this Court is invoked are stated under Division II, at page 5 of the foregoing Petition.

STATEMENT OF THE CASE

A statement of the case is set forth under Division I, at pages 1-5 of the preceding petition, and the same is hereby adopted and made a part of this Brief.

SPECIFICATION OF ERRORS

Errors intended to be urged are those specified under Division III at pages 5-6 entitled "Questions Presented"; the Court of Appeals having ruled adversely to Vaughan, or failed to rule, upon the questions there stated.

SUMMARY OF ARGUMENT

A. The District Court should have taken jurisdiction of the res, "Florence" Plantation, and determined which party is equitably entitled to the property—Vaughan, or Mewis.

B. The District Court should have taken jurisdiction of all the ancillary claims which arose out of the series of allegedly fraudulent transactions involving "Florence" Plantation, and made final determination of them.

C. But the District Court should have waited for a trial or hearing, after proper notice to parties, before making any finding upon the merits of either the principal suit or the ancillary claims.

ARGUMENT.

A. The District Court should have taken jurisdiction of the RES, "Florence" Plantation, and determined which party is equitably entitled to the property—Vaughan, or Mewis.

1.

In the case of **Angle v. Chicago, St. P. M. & O. R. Co., 151 U. S. 1; 14 S.Ct. 240; 38 L.Ed. 55**; this United States Supreme Court, at pages 26 and 27 of 151 U. S. 1, in the plainest language laid down the Rule:

> **". . . Whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentations, concealments, or through undue influence, duress, taking advantage of one's weakness or necessities or through any similar means or under any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest; Equity impresses a Constructive Trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same; although he may never, perhaps, have had any legal estate therein; and a court of equity has jurisdiction to reach the property either in the hands of the original wrongdoer; or in the hands of any subsequent holder, until a purchaser of it in good faith and without notice acquires a higher right, and takes the property relieved from the Trust. The forms and varieties of these Trusts, which are termed EX MALEFICIO or EX DELICTO, are practically without limit. The principle is applied whenever it is necessary for the obtaining of complete justice, although the law may also give the remedy of damages against the wrongdoer".** (Our emphasis.)

If the allegations of the Complaint are true; under no conditions, under this Rule of Conscience, could the Defendant, Mewis, be entitled, in equity, to the enjoyment of

"Florence" Plantation. And having alleged his equitable claim to "Florence" Plantation (R. 59, 14, 9; also Post. 13, 14) Vaughan was at least entitled to an opportunity to try to prove it. **Continental Collieries, Inc., v. Shober, 130 F. (2d) 631.**

2.

The facts of jurisdictional amount (R. 3) and diversity of citizenship (R. 1-3) are affirmatively set forth in the Complaint. The value of the property involved is shown to be at least $75,000.00 (R. 9), and the Complaint, filed **"In Equity"** (R. 1) prays for cancellation of deeds allegedly obtained through fraud (R. 8-9). This Court has stated the Rule in **Barry v. Edmunds, 116 U. S. 550, 559; 6 S.Ct. 501; 29 L.Ed. 729;** and later in **Deputron v. Young, 134 U.S. 241, 252; 10 S.Ct. 539; 44 L.Ed. 923:**

> "A suit cannot be properly dismissed as not involving a controversy within the jurisdiction of the Court unless the facts of record create a legal certainty of that conclusion."

3.

Since the power to cancel written instruments and deeds obtained through fraud is exclusively equitable, **McCracken v. McBee, 96 Ark. 251; 131 S. W. 450; Brach v. Moen, 35 F. (2d) 475, 476; certiorari denied, 280 U. S. 613; 74 L.Ed. 655; 50 Sup. Ct. 162,** the proper forum, that of equity, was chosen by Vaughan (R. 1) for the main or principal suit (R. 8, 9, 24, 25), which seeks cancellation of certain deeds, and asserts his equitable claim to "Florence" Plantation (R. 59, 14), which is real property located within the District's Division (R. 3-4), and which deeds were allegedly obtained by the defendant Mewis through fraud (R. 8).

4.

A sworn bill which alleges that "Florence" Plantation is the name of a large Plantation (R. 3); and alleges in particular how plaintiff Vaughan was deprived, first of equitable ownership and possession (R. 4-9), then of legal title (R. 8) through the alleged frauds of his attorney (R. 22-23) and agents (R. 4-8); and in his prayer for relief prays the cancellation of the allegedly fraudulently obtained deeds (R. 8-9) and the return of those lands to him (R. 9), and that the alleged wrongdoers be compelled to vacate those lands (R. 10-11); such a bill states not only a cause of action involving real estate, but states a claim for relief as well. **McLaughlin v. McCrory, 55 Ark. 442; 18 S. W. 762.** And since the decree sought seeks to reach and operate upon the land itself; it is a proceeding **in rem**, a local action which must be brought in the District where the land is situated. **Dowdle v. Byrd, 201 Ark. 775; 147 S. W. (2d) 343. Drum v. McDaniel, 215 Ark. 690; 222 S. W. 59.**

5.

A sworn bill which alleges that Vaughan became the equitable owner in possession of "Florence" Plantation (R. 4), subject only to the payment of a stated sum (R. 3-4); and who continued as equitable owner in possession (R. 6) until a series of allegedly fraudulent acts and transactions on the part of his attorney and agents (R. 4-8) allegedly lured him out of possession with a $75,000.00 bait (R. 8); allegedly denied him the acquirement of legal title (R. 8); allegedly denied him re-possession by a secret and fraudulent transaction (R. 7-8); and then made their arrangements for the acquisition of the lands from the adverse party, Branson (R. 8)—allegedly without paying the plaintiff, Vaughan, one cent for his equity (R. 8)—such a sworn bill seeks to enforce an equitable claim to real estate if it prays

for the cancellation of the deeds allegedly obtained through fraud, and the vesting of title in the plaintiff. **Angle v. Chicago, supra.**

B. The District Court should have taken jurisdiction of all the ancillary claims which arose out of the series of allegedly fraudulent transactions involving "Florence" Plantation, and made final determination of them.

1.

The prayer for the return of a $500.00 retainer fee allegedly paid attorney, defendant Carneal Warfield (R. 5), who allegedly prior to or soon after receipt of payment entered into the employ of the adverse party, defendant Mewis (R. 6); and in conjunction with Mewis and other defendants allegedly successfully defrauded plaintiff, Vaughan, of the $75,000.00 plantation (R. 8)—being an element required to afford plaintiff **complete** relief—though ancillary and subordinate to the main suit for the cancellation of deeds and recovery of the property; will not preclude the District Court's jurisdiction as to the defendant Carneal Warfield—despite the plea that the alleged retainer fees were less than $3,000.00. **Wabash Railroad Co. v. Adelbert College of the Western Reserve University, supra.** An attorney must not represent opposed interests. The prohibition is absolute and the consequence is a forfeiture of all pay. The purpose of the prohibition is to insure the advantage to the client of the undivided allegiance of his attorney. **Silbiger v. Prudence Bonds Corp., 180 F. (2d) 917, at pages 920-921.**

2.

Ancillary to the main or principal suit, there is asserted by the plaintiff, Vaughan, against all the defendants, his right to **complete** relief from wrongs which arose out of

the same series of transactions and occurrences which led to his loss of "Florence" Plantation (R. 8-11). The question as to whether there was fraud present is common to all of the defendants (R. 8), and cannot escape arising at the trial. Therefore, all were properly joined in this action as provided by **Rule 20(a), Federal Rules of Civil Procedure.** "It is not indispensable that all of the parties should have an interest in all of the matters contained in the suit; it will be sufficient if each party has an interest in some material matter in the suit, and they are connected with the others." **Brown v. Guarantee Trust & Safe Deposit Co., 128 U. S. 403, 412; 9 S.Ct. 130; 32 L.Ed. 466.** A bill to cancel deeds as to two defendants (C. A. Mewis and Mrs. C. A. Mewis, R. 8-9); to recover attorney's fees from another (Carneal Warfield, R. 10); to recover possession of the lands from others (Mewis, Kraemer and Keith Brothers, R. 10-11); and to deny agent's commissions to still other defendants (King and the First National Bank of Greenville, Mississippi, R. 9-10) is proper—especially where it is alleged that all parties were concerned in the fraudulent procurement of the deeds and possession of the property. **Kelly v. Boettcher, 85 Fed. 55.**

3.

The subject matter of the principal suit and the prayer of the Complaint have to do with the cancellation of deeds to real property, known as "Florence" Plantation (R. 8-9), located within the Division (R. 3), allegedly obtained through fraud (R. 83); and the enforcement of Vaughan's equitable claim to the property (R. 9, 14, 59; also pages 13, 14, supra). It is an action **in rem.** Therefore, the District Court may by **Title 28, U. S. C. A., 1655,** require appearance of defendants residing beyond the State's borders, and cause notice of its Order, in that behalf, to be given with binding effect. **Kleinschmidt v. Kleinschmidt Laboratories, 89 F. Supp. 869**

C. But the District Court should have waited for a trial or hearing, after proper notice to parties, before making any finding upon the merits of either the principal suit or the ancillary claims.

The District Court's Order of January 5, 1953, was an **ex parte** order (R. 45). That means that it was granted at the instance and for the benefit of the defendants only, and without notice to Vaughan, who was adversely interested. **Black's Dictionary, Second Edition, page 452.**

Rule 77(b) of the Federal Rules of Civil Procedure expressly provides that **"All trials upon the merits shall be conducted in open court."** (Our emphasis.)

In this case, by "open court" is meant a court which has been formally convened and declared open for the transaction of its proper judicial business. **Black's Dictionary, Second Edition, page 854.**

The Terms of the District Court of the United States for the Eastern District of Arkansas, Western Division, sitting at Little Rock, Arkansas, are the **"First Monday in April and third Monday in October." Rules of the United States District Court for the Eastern District of Arkansas, effective April 1, 1949, page iii. Martindale-Hubbell Law Directory, Vol. III, Law Digests, Court Calendars.**

The Complaint was filed November 28, 1952 (R. 1). Therefore, the next "open court" could not take place until **April, 1953.** But on January 5, 1953, the Court, without conducting an "open court," **ex parte** dismissed the cause for lack of jurisdiction (R. 36-37) and made lengthy findings upon the merits **which now bar, as res judicata, the merits of a cause which could not possibly have been legally determined prior to April, 1953.** Any **ex parte** finding of the District

Court going to the merits of the case and not to the matter of jurisdiction; has no place in an Order dismissing cause for want of jurisdiction. **Mutual Life Insurance Co. of N. Y. v. Markowitz, 78 F. (2d) 396; certiorari denied, 296 U. S. 625; 80 L.Ed. 444; 56 S. Ct. 148.**

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

JACK C. VAUGHAN,
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